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333 Commerce Street
Nashville, Tennessee 37201-3300

Guy M. Hicks
General Counsel

May 11, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and NOW Communications, Inc. Pursuant to the Telecommunications Act of 1996*
Docket No. 00-00141

Dear Mr. Waddell:

Enclosed are fifteen copies of the May 1, 2000 Order of the Kentucky Public Service Commission denying NOW's Motion to Dismiss BellSouth's Petition for Arbitration. Copies of this Order were previously submitted to the Authority on May 5th. However, pages were missing from the copy submitted. We apologize for the inconvenience.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

cc: Honorable Richard Collier

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

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Carroll H. Ingram
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☐ Overnight

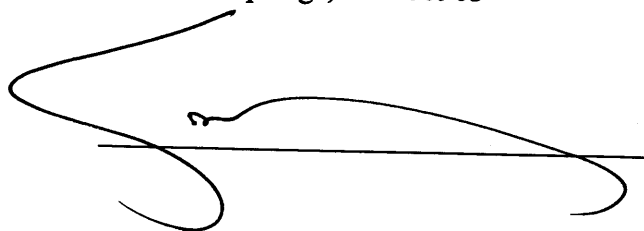
Charles B. Welch, Esquire
Farris, Mathews, et al.
205 Capitol Blvd, #303
Nashville, TN 37219

- ☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Mingee, III
McKay & Simpson
4084 Coker Road
Madison, MS 39110

- ☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

R. Scott Seab
NOW Communications, Inc.
711 South Tejon Street, #201
Colorado Springs, CO 80903

A large, stylized handwritten signature in black ink, written over a horizontal line.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
MAY 05 2000
LEGAL DEPT. (KY.)

In the Matter of:

PETITION FOR ARBITRATION OF THE)
INTERCONNECTION AGREEMENT)
BETWEEN BELL SOUTH)
TELECOMMUNICATIONS, INC. AND)
NOW COMMUNICATIONS, INC.)
PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

CASE NO. 2000-089

O R D E R

On February 25, 2000, BellSouth Telecommunications, Inc. ("BellSouth") petitioned for arbitration with NOW Communications, Inc. ("NOW") seeking resolution of certain issues regarding negotiation of a resale agreement.

BellSouth contends that there are ten issues for Commission arbitration, including rates to be charged by BellSouth for NOW's access to the electronic and manual interfaces of BellSouth's operations support systems ("OSS") and functions. The other issues involve contracting language and terms.

On March 17, 2000, NOW filed a motion to dismiss BellSouth's petition. On March 21, 2000, NOW filed its formal response to BellSouth's petition, and on March 29, 2000, BellSouth filed its response to NOW's motion to dismiss. NOW's motion to dismiss argues that the Commission lacks subject matter jurisdiction to hear BellSouth's petition for arbitration because the petition was filed outside of the statutory window provided in 47 U.S.C. 252(b)(1).

DL
CC: 76 BR
JC LK
SR NDB
CS 5/3/00, JF

As BellSouth's response to NOW's motion contends, NOW specifically requested of BellSouth an extension of 30 days to the statutory window of time in which request for arbitration would be made. BellSouth concurred in the request and NOW countersigned the letter agreeing to the extension. The parties correctly acknowledge that the statutory deadlines for petitions for arbitration are a matter of jurisdiction. However, the federal Act provides wide latitude for party negotiations and acceptance for party determinations. BellSouth, in good faith, granted the request of NOW. As BellSouth framed its grant of NOW's request, the agreement between the parties was "to alter the start date for the parties' negotiations which would trigger the statutory arbitration deadlines."¹ The Commission finds that BellSouth framed this "extension" appropriately. The parties are free to negotiate about the time that their negotiations are deemed to have begun for the statutory calculations. This practice is common and is a cornerstone for good faith negotiations. NOW's motion to dismiss should be denied. The Commission must make the final determinations of the contested issues by June 19, 2000.

Accordingly, IT IS THEREFORE ORDERED that:

1. NOW's motion to dismiss BellSouth's petition for arbitration is denied.
2. A hearing is scheduled for May 31, 2000 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky. There shall be no opening statements, direct testimony, or summaries of direct testimony without special leave.
3. By May 15, 2000, the parties shall prefile direct testimony.

¹ BellSouth's response to NOW's motion to dismiss, at 3.

4. Parties shall file the original and twelve copies of all testimony. The original and at least three copies of the testimony shall be filed as follows:

- a. Together with cover letter listing each person presenting testimony.
- b. Bound in 3-ring binders or with any other fastener which readily opens and closes to facilitate easy copying.
- c. Each person's testimony should be tabbed.
- d. Every exhibit to each person's testimony should be appropriately marked.


5. Each party shall submit in contract form its best and final offer on each disputed issue no later than May 15, 2000.

6. Any agreed-upon portions of the parties' contracts, which have not already been filed, shall be filed by May 15, 2000.

Done at Frankfort, Kentucky, this 1st day of May, 2000.

By the Commission

ATTEST:


Executive Director